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for the Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

Edward A. Zraick, Jr., individually and as joint  
tenant; Nancy Zraick, individually and as joint  
tenant; Patricia Zraick DeLuca, individually and as  
joint tenant; Karen M. Rich, individually and as  
joint tenant; Estate of Lorraine Zraick; Edward A.  
Zraick, Jr., as personal representative of the Estate

Adv. Pro. No. 10-05257 (SMB)

of Lorraine Zraick; and Patricia Zraick DeLuca, as  
personal representative of the Estate of Lorraine  
Zraick,

Defendant.

**STIPULATION AND ORDER WITHDRAWING MOTION TO DISMISS  
WITHOUT PREJUDICE**

WHEREAS, Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC, under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and the substantively consolidated estate of Bernard L. Madoff individually, filed and served the complaint (the “Complaint”) against the above-captioned defendants (the “Zraick Defendants”);

WHEREAS, defendants in certain adversary proceedings (“Defendants”) moved this Court to dismiss the complaints filed against them by the Trustee seeking to avoid and recover transfers of fictitious profits made by BLMIS to or for the benefit of Defendants (the “Motions”);

WHEREAS, this Court directed the Trustee to file one omnibus opposition to all pending Motions filed by Defendants on or before March 10, 2014. This Court further directed all participating Defendants shall reply on or before March 17, 2014. *See* Case Management Order Regarding Certain Pending Motions to Dismiss, *In re Madoff*, Adv. Pro. No. 08-01789 (SMB) (Bankr. S.D.N.Y. Feb. 21, 2014), ECF No. 5695 (“February 21 Order”);

WHEREAS, this Court directed the Trustee to provide all Defendants with pending Motions with notice and an opportunity to “opt out” of the omnibus briefing process referenced in the February 21 Order in the event that Defendants did not wish to file a reply or otherwise participate in the omnibus briefing process on the Motions;

WHEREAS, the Trustee filed an omnibus opposition on March 10, 2014 with three appendixes: (i) Appendix A identifying all defendants participating in the omnibus briefing

process; (ii) Appendix B identifying all defendants that opted out as of March 10, 2014; and (iii) Appendix C identifying which participating Defendants raised each argument addressed in the Trustee's Opposition. *See* Trustee's Memorandum of Law in Opposition to Defendants' Motions to Dismiss, *In re Madoff*, Adv. Pro. No. 08-01789 (SMB) (Bankr. S.D.N.Y. Feb. 21, 2014), ECF No. 5803 ("Trustee's Opposition");

WHEREAS, on March 7, 2014, the Zraick Defendants indicated to counsel for the Trustee their desire to opt out of the omnibus briefing process in order to proceed to mediation.

NOW THEREFORE, the Trustee and the Zraick Defendants, each by and through their respective undersigned counsel, hereby stipulate and agree as follows:

1. The Zraick Defendants withdraw, without prejudice, the Motion as filed in the above-captioned action (*see* ECF Nos. 9-10) in order to proceed to mediation as permitted under the Order (1) Establishing Litigation Case Management Procedures for Avoidance Actions and (2) Amending the February 16, 2010 Protective Order, *In re Madoff*, Adv. Pro. No. 08-01789 (SMB) (Bankr. S.D.N.Y. Nov. 10, 2010), ECF No. 3141 ("Litigation Procedures Order"), governing the prosecution of BLMIS avoidance actions. The Zraick Defendants reserve their rights to re-file a motion to dismiss in the event that mediation is unsuccessful.

2. The Trustee shall file a Notice of Mediation Referral as defined in the Litigation Procedures Order, substantially contemporaneous with the filing of this stipulation.

3. Except as expressly set forth herein, the parties to this stipulation reserve all rights and defenses they may have, and entry into this stipulation shall not impair or otherwise affect such rights and defenses, including without limitation any defenses based on lack of jurisdiction.

4. This stipulation may be signed by the parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and

the same instrument. A signed facsimile, photostatic or electronic copy of this stipulation shall be deemed an original.

Dated as of: March 20, 2014

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Liquidation of Bernard L. Madoff  
Investment Securities LLC and the Estate  
of Bernard L. Madoff*

SO ORDERED:

Dated: March 21<sup>st</sup>, 2014  
New York, New York

/s/ STUART M. BERNSTEIN  
HON. STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE